

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GERRY M. COPPEDGE,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 83-183

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a notice of violation and civil penalty of \$200 (\$175 being suspended) for open air burning of prohibited materials in violation of the State Clean Air Act, came on for formal hearing before the Pollution Control Hearings Board; Lawrence J. Faulk and Gayle Rothrock, chair (presiding), on September 27, 1983, at Vancouver.

Appellant Mr. Coppedge appeared and represented himself. Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared by its attorney David Jahn.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and the exhibits reviewed, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's
7 regulations and amendments thereto, which are noticed.

8 II

9 On June 14, 1983, from mid-morning to mid-day, appellant and
10 members of his immediate family allowed or caused an outdoor fire of
11 natural vegetation and prohibited materials to occur in a vacant lot
12 adjacent to and northwest of 1324 NE Minnehaha Street.

13 III

14 There were two large fire piles; one 25 feet by 8 feet and another
15 20 feet by 6 feet. The larger of the two piles was billowing opaque
16 grey-white smoke offensive enough to cause complaints and concern for
17 individual's health. Complaints were telephoned to respondent agency
18 and the local fire station.

19 IV

20 Respondent SWAPCA's inspector, responding to a complaint call,
21 arrived at the fire site at 10:30 and discussed the codes and
22 practices of open burning with appellant's wife. This included a
23 discussion of restructuring the fire to achieve increased temperature
24 and better combustion. The inspector indicated his intention to
25 return later to check on the progress of burning. He then traveled to
26 the nearby fire station.

V

In response to another complaint a second inspector arrived at the site at 11:00 a.m., simultaneous with the arrival of firefighters concerned about the smoke, and observed appellant and his family adding old cedar shingles to the larger fire pile. Appellant believed he'd received telephone permission to burn two medium-sized fires on the site on that date from the local fire station.

Prohibited materials were noted as involved in that pile; e.g. cans, tar paper, an auto seat, plastic covering, lawn chairs, tennis shoes, a metal pan, bedsprings, and plywood. And, additional prohibited materials were smoldering beside the subject pile or lying outside its perimeter. The firefighters attempted to extinguish the larger fire, with only partial success.

VI

The second inspector was unable to obtain the necessary information and signature from appellant to issue a field notice of violation. The inspector could ascertain no evidence of a permit. Appellant and his family then left the site prior to the departure of the second inspector.

Respondent agency's Executive Director issued a notice of violation and \$200 civil penalty June 16, 1983, for violation of Section 400-035 of Regulation I. Later that same business day the Director suspended \$175 of the penalty by letter notice believing there were mitigating circumstances and at least one misunderstood communication involved. On August 17, 1983, appellant received a

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1 letter from respondent indicating the remaining \$25 was due and
2 payable. On September 9, 1983, this Board received Mr. Coppedge's
3 appeal of that penalty.

4 VII

5 Any Conclusion of Law which should be deemed a Finding of Fact is
6 hereby adopted as such.

7 From these Findings the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 The Legislature of the State of Washington has enacted the
11 following policy on outdoor fires:

12 It is the policy of the state to achieve and maintain
13 high levels of air quality and to this end to
14 minimize to the greatest extent reasonably possible
15 the burning of outdoor fires. Consistent with this
16 policy, the legislature declares that such fires
17 should be allowed only on a limited basis under
18 strict regulation and close control. (RCW 70.94.740).

19 Pursuant to this and other legislative authority, the respondent has
20 adopted its Regulation I, Section 400-035, which provides in relevant
21 part:

22 No person shall ignite, cause to be ignited, permit
23 to be ignited, or suffer, allow, or maintain any open
24 fire within the jurisdiction of the Authority, except
25 as provided in this Regulation...(2) Open burning may
26 be done under permit (under certain conditions)...

27 Appellant and his family allowed open burning of natural
vegetation mixed with prohibited materials which cannot qualify for
approved burning or a permit and, therefore, is in violation of
Section 400-035.

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II

Before igniting outdoor fires, it is the responsibility of the citizen(s) or business involved to become aware of and exactly adhere to good air pollution control practices, such as are set forth in respondent's Regulation I and in fire district codes. Exact adherence to the fire district's oral grant of permission did not occur here with respect to the admonition to burn only natural vegetation in no more than two medium-sized piles (emphasis added).

III

Because the air pollution violation committed by appellant is, apparently, his first and some complications surrounded this event, part of the \$200 penalty should have been suspended.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The action of the Southwest Air Pollution Control Authority is affirmed; the \$175 suspension being due and payable only if there are any additional violations. The \$25 remaining is due and payable within 30 days of the entry of this order.

DATED this ____ day of October, 1983.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman


LAWRENCE J. FAULK, Member